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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DORON AVERBUCH, Plaintiff and Appellant, v. YAFIT STREKOVSKY, Defendant and Respondent.	B201764 (Los Angeles County Super. Ct. No. BF030131)

APPEAL from a judgment of the Superior Court of Los Angeles County. Marjorie S. Steinberg, Judge. Affirmed.

Joan T. Daniels for Plaintiff and Appellant.

Carl Etting for Defendant and Respondent.

* * * * * * * * * *

This family law dispute evades simple solutions. Mother and father, both Israeli citizens, are unmarried and have one son, T.A. Father challenges on procedural and substantive grounds the trial court judgment allowing mother to relocate to Israel with T.A. He understandably worries that the long-distance move may negatively impact his relationship with T.A., who was born in 2005.

We conclude that the trial court acted within its discretion in fashioning a comprehensive order that would serve T.A.'s best interest given the constraints of this family situation. The court recognized that the best plan would be one that allowed T.A. regular contact with both parents, but that such a plan was not possible where mother could not work in the United States. The court recognized that requiring mother to post a bond would bolster her promise to facilitate visitation between father and T.A. but concluded that granting a relocation request should not be contingent on a parent's wealth.

The court's judgment reflects an effort to maintain as much as possible father's relationship with T.A. despite allowing mother to relocate. The court required mother to register the California judgment in Israel and stipulate to the continuing jurisdiction of the California court. The court granted father 21 days of visitation in the United States in addition to visitation in Israel and ordered a "travel trust" be established whereby $500 of father's support payments are to be deposited into a travel trust instead of being sent to mother. The judgment reflects the real constraints faced by this family.

Father argues that the court should have held further proceedings, but he agreed to the process employed by the trial court until it resulted in a verdict adverse to him. Father identifies no specific evidence that would have been presented had the court granted his request for a mistrial, but only generally states that expert witnesses and discovery was necessary. Father was given notice of mother's relocation request; challenged the request; and had an opportunity to be heard.

Father also challenges the court's substantive conclusion that mother could relocate to Israel with T.A. But in doing so, he ignores important findings of the court. The court concluded that T.A. was primarily bonded to mother and that mother was the

primary custodial parent. The court expressly found that awarding father sole custody would not serve T.A.'s best interest. The court also found that mother demonstrated "every intention of facilitating contact" between father and T.A. Where the parties' testimony differed, the court credited mother's version of events, and it is not the task of this court to reweigh credibility. (*In re Marriage of Roe* (1993) 18 Cal.App.4th 1483, 1488, disapproved on other grounds in *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 38, fn. 10 (*Burgess*).) While father's desire to be closer to T.A. is compelling, he demonstrates no abuse of discretion in the court's decision to allow mother to relocate.

Finally, father challenges the attorney fee award. That order was not included in the notice of appeal and therefore is not cognizable on appeal.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

T.A. was born to Doron Averbuch (Averbuch or father) and Yafit Strekovsky (mother) in November 2005. Father subsequently married a woman who is not a party to the proceedings and about whom no information was revealed.

When T.A. was born, mother and T.A. lived with father. After mother moved out of father's apartment, he filed a petition to establish a parental relationship under the Uniform Child Custody Jurisdiction and Enforcement Act. He requested joint physical and legal custody of T.A. and visitation. The specific visitation schedule he requested was: alternate Saturdays; alternate weekends overnight; Tuesday and Thursday evenings. In a declaration, father stated that he helped take care of T.A. and played with him. Father's income and expense declaration indicated that his monthly income was almost $2,700 and that he had approximately $10,000 in assets. He also stated that he had over $46,000 in credit card debt.

In a responsive pleading, mother requested child support and that father pay her attorney fees and costs and medical bills. Mother also asked for a relocation order allowing her to move to Israel with T.A. In a declaration, mother explained that she lived in the United States from 1989 to 2000 and then returned to Israel. Mother had been working in Israel but left Israel to move to the United States to marry father. Eventually,

they decided not to marry. Mother's parents and brother lived in the United States but planned to return to Israel. Mother attached a copy of father's application for lease in which he indicated his monthly income was $10,000. Mother filed an income and expense declaration indicating that she was not employed but previously worked in Israel managing a boutique. She stated her salary was zero and she had no assets. Mother later filed her own order to show cause (OSC) seeking attorney fees.

Father filed a declaration in opposition. He stated: "I oppose Respondent's request that our son T.A. be allowed to move to Israel." "Should the Court consider a move-away, I request a full child custody evaluation with psychological testing. This is because I believe the Respondent is a pathological liar and will do or say anything to get what she wants." Father stated, "It is my desire to be an active, participating parent in [T.A.'s] life."

The court issued an interim order awarding joint legal custody and sole physical custody to mother. Father was allowed visitation on Tuesday, Thursday, and Sunday with overnight visitation to start in January.

Hearings were held on February 21 and 28th. The court heard testimony from mother, father, and a child evaluator. The evaluator had been appointed to evaluate custody and visitation in light of the move-away request.

1. Court Findings

The court found that father cares a great deal for T.A. and appears to be a good parent, but mother is the primary caretaker. The court concluded T.A. is most bonded to mother. After the court indicated tentatively from the bench that it would reject the evaluator's testimony and allow mother to relocate with T.A., father hired new counsel. His new attorney was "outraged" with the court procedures and argued that he did not have a full panoply of protection in this serious case. Father filed a motion for a mistrial.

In a lengthy statement of decision dated May 30, 2007, the court made all of the following findings:

- Mother lives with her parents who plan to return to Israel. The remainder of her family lives in Israel.

- Mother has an offer to work in Israel; since she returned to the United States in 2005, she has not worked outside the home.
- Mother has always been the primary caretaker of T.A. When mother and father lived together, father occasionally helped change T.A.'s diaper or helped bathe him.
- Father did not exercise all of the visitation afforded to him under the court's interim orders.
- The evaluator recommended awarding father primary custody if mother relocated in Israel and testified that otherwise father's relationship with T.A. would be disrupted.
- Mother is T.A.'s primary custodial parent. Awarding father primary custody would not serve T.A.'s best interest.
- Mother has a good faith reason to relocate and is not seeking to move in order to interfere with father's relationship with T.A.
- Father's credibility is questionable. His lease application indicated that his monthly income was $10,000. He claims to have repaid a $35,000 loan just prior to completing his income and expense declaration with no indication that such loan existed.
- Mother has shown every intention of facilitating contact between father and T.A. There was no evidence in support of father's argument that mother would not be able to return to the United States to visit. If that were accurate, it would support mother's relocation request since father indicated he would have a green card in a few months.
- T.A.'s need for continuity and stability is served by remaining with mother. Although father loves T.A., he has played a limited role in T.A.'s life to date and he does not seem prepared to assume primary physical custody.

Father objected to the statement of decision, arguing that the procedures employed were insufficient and the court failed to take into account relevant considerations. Father did not however object to any specific factual finding.

2. Judgment

On June 26, 2007, the court entered judgment, which included all of the following:

- Mother consented to California having exclusive jurisdiction over her, father, and T.A. in all custody issues.
- Legal custody was awarded jointly to father and mother; mother was awarded primary physical custody.
- Mother was allowed to relocate to Israel. Prior to relocating, mother was required to register the child custody orders in Israel and ordered to reregister it every year. Mother also was required to file a stipulation consenting to California's exclusive jurisdiction and refile it every year.
- Father's visitation in the United States and in Israel was carefully delineated.
- The court's order regarding child support arrearages was stayed as surety for mother attempting to modify the order in Israel. In addition, father was ordered to deposit $500 of each month's court ordered child support in a "Travel Fund Trust Account." The funds were to be used to pay transportation for visitation. If father believed that mother was violating the orders, he could petition the court to use any further child support for transportation and attorney fees in seeking enforcement of the orders.
- The motion for a mistrial and to reopen the hearing was denied.

Father timely appealed from the judgment.

DISCUSSION

Father argues that the procedures were flawed and the court abused its discretion in allowing mother to relocate. He also argues that the court lacked jurisdiction to enter an award for attorney fees and costs.

I. Father's Procedural Challenges Lack Merit

Father correctly points out that this case started with his request for an OSC regarding custody and visitation. He requested primary physical custody, joint legal custody, and child visitation. He argues that the proceedings "magically metamorphosed" into hearings that ultimately led to the court's removal order and that the procedures employed by the court denied him due process and failed to account for the serious nature of the court's orders in this case. Father argues that "[a] prudent family law trial court would have ordered a full custody evaluation, and set the matter for a formal trial post-evaluation."

Father was not sandbagged by the relocation request. In her responsive pleading to his petition for OSC, mother requested a relocation order. That was filed November 1, 2006. At a hearing on November 14, 2006, the court stated that this case involved a "request to move out of the country." Father's counsel agreed. Father's counsel also agreed that the first step with respect to considering the move away request should be to get a solution focused evaluation. Father acknowledges in his reply brief that "neither party filed a Request for Trial Setting." Nevertheless, the court's November 17, 2006 minute order reflects that the nature of the proceedings was a "trial setting conference."

On February 21, 2007, the court heard testimony from the evaluator and mother and father. The court stated, "[I]f either party feels they need more court time, they should let me know. We have the afternoon of March 7th available. . . . [¶] . . . when we talked about this earlier, the parties had seemed satisfied with the solution-focused evaluation as a way to go which kind of confined us to this afternoon. But I don't want to cut off either testimony and argument given the seriousness of this matter." Father's counsel did not object to the procedure and did not request additional time.

Testimony continued on February 28, 2007. Counsel for father indicated that he believed "the custody/visitation part of the case was . . . submitted already. . . ." The court allowed counsel for mother to pursue that issue and provided counsel for father a similar opportunity. At the end of that hearing, counsel for father argued that mother did not articulate any good reason to move to Israel and that she lived in the United States for

13 years. Counsel argued that mother should not have allowed her work permit to expire. Counsel emphasized the evaluator's testimony that it was not in T.A.'s best interest for him to move.

Following the hearing, the court indicated that it had to consider the best interest of T.A. The court had "no doubt" that mother was the primary custodial parent. "And there is clearly a detriment to losing this child's contact with his father. And that is true in every move away but most especially so when it's an international move away." The court stated that father is devoted to T.A. "but he has not evidenced the kind of concern and devotion that I would have expected to see over the last few months." The court indicated that it was detrimental for T.A. to move to Israel when father was in the United States but still had to consider T.A.'s best interest. The court found that mother had not interfered with father's visitation. Father's attorney asked for time to think through a proposed visitation schedule.

After that hearing, father hired a different attorney who filed a motion for a mistrial. Father requested that the court "continue this matter for further, long-cause evidentiary proceedi[n]gs; and allow adequate time for retention of expert witnesses and discovery." Father argued that he was surprised. Father stated in his motion, "This family has only modest means. Their financial resources are inadequate to preserve even a token long-distance parenting plan." In a declaration, counsel stated that she estimated litigation in a moveaway case may exceed $80,000 to $100,000.

Contrary to father's argument in his motion for a mistrial and on appeal, there was no "magical metamorphosis" and father was not surprised. Father had notice of mother's relocation request and more than one opportunity to be heard on that issue. The record reflects the trial court understood the importance of the relocation issue and also understood that, as father stated, the family was of modest means. Father's first counsel agreed to the procedures. Father did not object to the procedures until after the trial court made a ruling on mother's relocation request. By failing to *timely* object, father forfeited the issue of the alleged deficiency. (*In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1558.) In addition, father identifies no specific witness or testimony that he was

precluded from giving, but simply requests to continue litigation that he acknowledges is costly and neither he nor mother have the ability to finance. While father states that he did not engage in discovery, he provides no reason for his choice to forego discovery. Mother points out that she engaged in discovery prior to the hearings and there was no order precluding father from doing the same.

This case is not like *In re Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116 (*Seagondollar*), where the court found the aggregate of procedural errors mandated reversal. In that case, the father filed an OSC in March 2004 requesting sole physical custody of his four children. (*Id.* at p. 1121.) The mother initially stated that the case was not a move-away case and the court confirmed its initial impression that the case did not involve a move-away request. (*Ibid.*) Then, in contrast to her initial representations, in October 2004, mother requested to move to Virginia with the children and requested shortened time for the court to hear her OSC. (*Id.* at p. 1123.) The court scheduled a hearing after father's request for a continuance based in part on his need to procure a material witness after the hearing on mother's OSC and refused to continue the hearing to allow father's rebuttal witness. (*Id.* at pp. 1124-1125.)

In contrast, in this case, the court permitted father the opportunity to present additional witnesses and father had none. Father made no requests prior to the court's ruling for continuances or for discovery that were denied. Mother, in her initial responsive pleading, requested a move-away order and that question was clearly before the court as acknowledged by both the court and father's counsel. While father states that he was denied his fundamental right to due process, he demonstrates no specific deficiency that deprived him of either notice or an opportunity to be heard. It is noteworthy that the relief father requests is for this court to remand the case to the trial court "for retrial," suggesting as the court found that while not designated a trial the procedures were the equivalent.

II. Father's Substantive Arguments Lack Merit

The statement of decision indicates that the trial court considered *Burgess*, *supra*, 13 Cal.4th 25; *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072 (*LaMusga*); and *In re*

Marriage of Condon (1998) 62 Cal.App.4th 533 (*Condon*) and the judgment reflects the application of these cases. The judgment also is consistent with our decision in *In re Marriage of Abargil* (2003) 106 Cal.App.4th 1294 (*Abargil*), which the trial court discussed from the bench.

In *Burgess, supra*, 13 Cal.4th at page 30, the California Supreme Court considered a mother's request to relocate 40 miles from her ex-husband. The couple had two children and father opposed the request on the grounds that it would interfere with his visitation schedule. He requested to be the primary caretaker if mother relocated. Mother had sole physical custody of the children and the parents shared legal custody. (*Id.* at p. 29.) The court noted that in making an initial custody determination, the trial court has wide discretion to consider the best interest of the child. (*Id.* at pp. 31-32.) "In addition, in a matter involving immediate or eventual relocation by one or both parents, the trial court must take into account the presumptive right of a custodial parent to change the residence of the minor children, so long as the removal would not be prejudicial to their rights or welfare." (*Id.* at p. 32.)

The high court upheld the trial court's discretion to allow mother to relocate. It found that her reason was employment related, was not an effort to thwart father's visitation, and would serve the children's interest in being closer to their primary caretaker. (*Burgess, supra,* 13 Cal.4th at p. 33.) "[T]he paramount need for continuity and stability in custody arrangements—and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker—weigh heavily in favor of maintaining ongoing custody arrangements." (*Id*. at pp. 32-33.) The high court concluded that the custodial parent does not need to show that the move is necessary. (*Id.* at pp. 28-29.)

Condon, supra, 62 Cal.App.4th 533 followed *Burgess*, and the court queried whether the *Burgess* standard for a move of 40 miles applied where one parent sought to move 8,000 miles to a different continent. "With some reluctance we conclude this court should not interfere at this late date with the trial court's carefully constructed order allowing this relocation of mother and children." (*Condon*, at p. 535.) "[T]here is no

doubt the court made herculean efforts to fairly balance all the factors in the case." (*Id.* at p. 549.)

In *Condon, supra*, 62 Cal.App.4th at page 536, the mother sought to move with two children to Australia while the father lived in Los Angeles. Mother was a native of Australia and father was an American citizen. (*Ibid*.) Both children were born in Australia but had lived for several years in Los Angeles. (*Ibid*.) Father sought sole legal and physical custody of the children. (*Id.* at p. 537.)

The trial court found the evidence slightly favored allowing mother's relocation. (*Condon, supra*, 62 Cal.App.4th at p. 540.) Mother could financially support herself in Australia; had extensive family support in Australia; the move would maintain the children's primary attachment to mother; and the children did not have a longtime base in California. (*Ibid*.) The trial court ordered some of father's support payments to go into a "travel-trust fund" to pay for transportation for visits with father. (*Ibid.*)

The *Condon* court highlighted the problematic nature of a separate continent relocation. Such relocation may subject the child to different cultural patterns and conditions. (*Condon, supra*, 62 Cal.App.4th at p. 546.) "With . . . great distances come problems of expense, jet lag, and the like. For a person of average income or below, an order relocating his or her child to a faraway foreign country is ordinarily tantamount to an order terminating that parent's custody and visitation rights." (*Id.* at p. 547.) In addition, the California court cannot guarantee that another country will honor the custody and visitation orders. (*Ibid*.)

To address these issues, the court made several recommendations. For example, if a moving parent cannot show that the termination of the other parent's rights would be in the best interest of the child an arrangement could be made "where the moving parent finances the other parent's visitation or the child spends alternate years in the two countries, or some other plan which accommodates the valuable relationship between the nonmoving parent and the child." (*Condon, supra*, 62 Cal.App.4th at p. 547.) To address the enforceability of the California court's order, one solution may be to require the

moving parent to post a bond or reduce child support payments if the moving parent is noncompliant. (*Id.* at p. 548.)

After considering Australian law, the court was concerned about the enforcement of the California orders. (*Condon*, *supra*, 62 Cal.App.4th at pp. 555-559.) It therefore remanded the case to the trial court to obtain a concession from mother of jurisdiction and to create sanctions to enforce the concession. (*Id.* at p. 562.) "At a minimum, such sanctions should include the posting of an adequate monetary bond" within the mother's means. (*Ibid*.)

We applied these principles in *Abargil*, *supra*, 106 Cal.App.4th 1294, and affirmed a judgment allowing a mother to move to Israel with her five-year-old son over the father's objection. (*Id.* at p. 1296.) Both the father and the mother were Israeli citizens. (*Id.* at p. 1297.) The mother was the son's primary caretaker. (*Ibid.*) The trial court found that staying with the mother served son's best interest. (*Id.* at p. 1298.) The court ordered the mother to register the judgment in Israel. (*Id.* at p. 1300.) Father argued that mother's visa violation meant that she could not bring son back to the United States and father could not travel to Israel without jeopardizing his application for permanent residency. (*Ibid.*)

We explained: "The hurdles to meaningful contact that Aharon [father] identifies cut both ways because they exist whichever direction one goes. For example, if Yuval [son] remained in the United States with Aharon, it would be equally, if not more, difficult for Michal [mother] to see him because she cannot legally enter this country. At the same time, Aharon's uncertain legal status in the United States would make it risky for him to take Yuval to some place outside the United States to visit Michal. Solomon of the Old Testament had it easy. By threatening to cut a baby in half, he flushed out a child's true parent. Here, in contrast, we have two loving parents, each of whom wants Yuval, but it may sadly be only one of them who will see him with any certainty." (*Abargil*, *supra*, 106 Cal.App.4th at p. 1300.)

We remanded the case for the trial court to order mother to post a substantial financial bond to ensure compliance with the judgment; to prohibit mother from

attempting to modify the judgment except upon application to a California state court and to require mother to register the judgment with the proper Israeli authority prior to taking their son to Israel. (*Abargil*, *supra*, 106 Cal.App.4th at pp. 1303-1304.)

The Supreme Court then reaffirmed that the "heart-wrenching circumstances [in family law move-away cases] remind us that this area of the law is not amenable to inflexible rules." (*LaMusga*, *supra*, 32 Cal.4th at p. 1101.) "Rather, we must permit our superior court judges—guided by statute and the principles we announces in *Burgess* and affirm in the present case—to exercise their discretion to fashion orders that best serve the interests of the children in the cases before them. Among the factors that the court ordinarily should consider when deciding whether to modify a custody order in light of the custodial parent's proposal to change the residence of the child are the following: the children's interest in stability and continuity in the custodial arrangement; the distance of the move; the age of the children; the children's relationship with both parents; the relationship between the parents including, but not limited to, their ability to communicate and cooperate effectively and their willingness to put the interests of the children above their individual interests; the wishes of the children if they are mature enough for such an inquiry to be appropriate; the reasons for the proposed move; and the extent to which the parents currently are sharing custody." (*Ibid*.)

The *LaMusga* court found that the majority of appellate cases affirmed the trial court's exercise of discretion and only two cases reversed, both of which involved unusual circumstances. (*LaMusga*, *supra*, 32 Cal.4th at p. 1092.) Like in the majority of cases, we affirm the trial court's exercise of discretion in the present case. Our review is for abuse of discretion as mother was T.A.'s custodial parent. (*Abargil*, *supra*, 106 Cal.App.4th at p. 1298.)

The court considered the relevant factors as demonstrated both by the court's comments on the record and by the judgment, which seeks to as much as possible safeguard father's rights. The court found the "paramount need for continuity and stability in custody arrangements is certainly served by [T.A.] remaining with his mother." It also found that father's conduct showed "his commitment to assuming an

active parenting role is lacking." The court required mother to submit to continuing California jurisdiction and to register annually the judgment in Israel. Because mother was not able to post a bond, $500 of father's monthly child support payments were deposited into a travel fund. While father argues these safeguards are insufficient, as mother points out, he offered no alternative. Although the court did not follow the evaluator's recommendation, that does not demonstrate an abuse of discretion. (*Abargil, supra,* 106 Cal.App.4th at p. 1299.)

In addition, while father states there was no expert testimony regarding the parties' ability to travel or regarding the Israeli courts application of California law, (*Abargil, supra,* 106 Cal.App.4th at pp. 1300-1301) the evidence was that mother could travel and father believed his green card would be forthcoming shortly. Neither side provided different evidence, and the trial court was allowed to rely on the evidence presented by the parties even though in his motion for a mistrial father challenged it.[1]

III. Attorney Fees and Costs

Father argues that the court lacked jurisdiction to award attorney fees and costs. Father's premise is that he did not have the ability to pay. Because the notice of appeal is from the judgment only, we requested supplemental briefing regarding the appealability of the order granting attorney fees. Father's argument regarding attorney fees therefore is not cognizable on appeal.

"Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from." (*Polster, Inc. v. Swing* (1985) 164 Cal.App.3d 427, 436.) The judgment in this case contains no mention of attorney fees. Father's notice of

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1 Appellant has attached, as exhibit 1 to his opening brief, 11 pages from what appears to be a treatise on international law. We decline to take judicial notice of this document as no proper request was made. (*Kinney v. Overton* (2007) 153 Cal.App.4th 482, 497, fn. 7; Cal. Rules of Court, rule 8.252(a)(1).) In his reply brief, appellant requests that this court take judicial notice of the files in superior court in *Condon*. This also is not a proper request, and appellant has not even provided to us the documents that are the subject of his request. (*Ibid*.) Therefore, we deny the request.

appeal is not sufficient to constitute an appeal from the order awarding fees and father confirmed that he "did not file a separate appeal" from the orders on attorney fees. Father further confirmed that the judgment "incorporated the move away orders" and he "filed his appeal of [*sic*] the Judgment only."

CONCLUSION

As father argues whether to allow one parent to relocate is "'one of the most serious decisions a family law court is required to make,' and should not be made 'in haste.'" (*Seagondollar*, *supra*, 139 Cal.App.4th at p. 1119.) Here, the trial court recognized the seriousness of the decision and was forced to choose the least deleterious outcome. It was not ideal as father argues and as the trial court recognized. The court expressly recognized the factors of *LaMusga* and *Condon* and its order reflects an effort to apply those cases and provide father with as many safeguards as possible within the constraints of this case. Although the judgment interferes with father's ability to daily parent T.A., father has not shown that the judgment was in error.[2]

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[2] Father's opening brief lacks citations to the record as required by California Rules of Court, rule 8.204(a)(1)(C). That rule requires that each brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." In the entire 26-page argument part, there is only one citation to the record on appeal to support appellant's version of what happened. There are a few citations to various orders without any record citation, but most statements are unsupported.

Even in the statement of facts several assertions are unsupported, making them difficult to understand. We have chosen largely to ignore the deficiency in father's brief. However, we required father to file a supplemental brief identifying in the record the attorney fee order he challenges and to explain why such order is appealable. Despite our specific request, father's supplemental brief failed to contain any citation to the record and provided no argument regarding the appealability of the attorney fee order.

Father also cites to foreign law, which he does not provide and of which he does not request judicial notice. (See *Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, 469, fn. 7.) We do not consider the law, which he has not demonstrated is a proper subject of judicial notice.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COOPER, P. J.

We concur:

FLIER, J.

BIGELOW, J.